

Applicant : Akerlund et al.
Serial No. : 10/063,159
Filed : March 26, 2002
Page : 12 of 16

Attorney's Docket No.: 19497-0016001 / P16512US00

Amendments to the Drawings:

The attached replacement sheet of the drawings is original Fig. 5, which replaces the previously submitted amended Fig. 5.

REMARKS

The Examiner rejected claims 1, 3, 8, 10, 12, 13, 15, 17, 19-21, 26, 28, and 30-33, while withdrawing claims 2, 4-7, 11, 18, 23-25, 29, and 34-49 from further consideration. Claims 1-8, 10-13, 15, 17-21, 23-26, and 28-49 remain pending. Applicants note that claims 9, 14, 16, 22, and 27 have been previously cancelled without prejudice.

Claim 1 has been amended herein to recite that the at least one inlet port comprises a protruding resilient tube and to recite that the hollow spike member is arranged to be retained inside the protruding resilient tube of the inlet port. Claim 21 has been amended herein to recite that the cap further comprising a luer-lock connector for attachment to a corresponding connector provided on a hollow spike that is arranged to be retained inside a protruding resilient tube of an inlet port of a container for infusion fluid. Claims 3 and 21 have been amended herein to replace the word "said" with the article "a." In addition, previously amended Fig. 5 has been replaced herein with originally filed Fig. 5. Applicants' specification fully supports these amendments. See, e.g., page 9, lines 10-15. Thus, no new matter has been added.

In light of these amendments and the following remarks, Applicants respectfully request reconsideration and allowance of claims 1, 3, 8, 10, 12, 13, 15, 17, 19-21, 26, 28, and 30-33. Applicants also respectfully request rejoinder, examination, and allowance of withdrawn claims 2, 4-7, 11, 18, 23-25, 29, and 34-49.

Objection under 35 U.S.C. § 132(a)

The Examiner objected to the amendment filed October 23, 2009, as allegedly introducing new matter regarding element 107 of Fig. 5.

Applicants respectfully disagree. To further prosecution, however, amended Fig. 5 has been replaced herein with originally filed Fig. 5. Thus, this objection is moot.

Rejections under 35 U.S.C. 112, second paragraph

The Examiner rejected claim 21 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for lacking antecedent basis for the phrase "said second fluid duct." Claim 21

has been amended herein to replace the word "said" with the article "a." Thus, this rejection is moot.

Rejections under 35 U.S.C. 102(b)

The Examiner rejected claims 1, 8, 10, 12, 16, and 20 under 35 U.S.C. § 102(b) as allegedly being anticipated by the Scarrow reference (U.S. Patent No. 5,061,264).

Applicants respectfully disagree. To further prosecution, however, claim 1 has been amended herein to recite a fluid transfer assembly where the at least one inlet port comprises a protruding resilient tube and where the hollow spike member is arranged to be retained inside the protruding resilient tube of the inlet port. At no point does the Scarrow reference disclose such a fluid transfer assembly. Thus, the Scarrow reference does not anticipate the presently claimed fluid transfer assemblies.

In light of the above, Applicants respectfully request withdrawal of the rejections of claims 1, 8, 10, 12, and 20 under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 21, 26, 28, 30, 32, and 33 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Scarrow reference (U.S. Patent No. 5,061,264) in view of the Shemesh *et al.* reference (U.S. Patent No. 5,817,083). The Examiner also rejected claims 3 and 19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Scarrow reference (U.S. Patent No. 5,061,264) in view of the Shemesh *et al.* reference (U.S. Patent No. 5,817,083). In addition, the Examiner rejected claims 13 and 31 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Scarrow reference (U.S. Patent No. 5,061,264) in view of the Shemesh *et al.* reference (U.S. Patent No. 5,817,083) in further view of the Haber *et al.* reference (U.S. Patent No. 5,593,028). Further, the Examiner rejected claims 15 and 17 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Scarrow reference (U.S. Patent No. 5,061,264) in view of the Shemesh *et al.* reference (U.S. Patent No. 5,817,083) in further view of the Vaillancourt reference (U.S. Patent No. 5,897,526).

Applicants respectfully disagree. Again, to further prosecution, claim 1 has been amended herein to recite a fluid transfer assembly where the at least one inlet port comprises a protruding resilient tube and where the hollow spike member is arranged to be retained inside the protruding resilient tube of the inlet port. In addition, claim 21 has been amended to recite a drug container where the cap further comprising a luer-lock connector for attachment to a corresponding connector provided on a hollow spike that is arranged to be retained inside a protruding resilient tube of an inlet port of a container for infusion fluid. At no point do the combinations of cited references teach, suggest, or provide any rationale that a person having ordinary skill in the art should make or use such a fluid transfer assembly or drug container.

The Scarrow reference discloses a fluid container having an inlet constituted by walls that are rigid, rather than resilient, since conduit (12) has a luer lock connector (16) at its end, and luer lock connectors are provided with a rigid structure to ensure that a good connection is made. Moreover, at no point does the Scarrow reference disclose any structure arranged to be retained inside the walls of conduit (12), let alone a hollow spike member that is arranged to be retained inside a protruding resilient tube as presently recited. On the contrary, luer-lock connector (32, 36) of cap assembly (20) is arranged to be connected to the outside of conduit (12). Thus, a person having ordinary skill in the art reading the Scarrow reference would have been led away from making or using the presently claimed fluid transfer assemblies and drug containers.

The Shemesh *et al.*, Haber *et al.*, and Vaillancourt references fail to correct the deficiencies of the Scarrow reference. Thus, the presently presented claims are patentable over the combinations of cited references.

In light of the above, Applicants respectfully request withdrawal of the rejections of claims 3, 13, 15, 17, 19, 21, 26, 28, and 30-33 under 35 U.S.C. § 103(a).

CONCLUSION

Applicants respectfully assert that claims 1, 3, 8, 10, 12, 13, 15, 17, 19-21, 26, 28, and 30-33 are in condition for allowance, which action is requested. Applicants also respectfully request rejoinder, examination, and allowance of withdrawn claims 2, 4-7, 11, 18, 23-25, 29, and

Applicant : Akerlund et al.
Serial No. : 10/063,159
Filed : March 26, 2002
Page : 16 of 16

Attorney's Docket No.: 19497-0016001 / P16512US00

34-49. The Examiner is invited to telephone the undersigned attorney if such would expedite prosecution. Please apply any charges or credits for additional claim fees to deposit account 06-1050.

Respectfully submitted,

Date: May 7, 2010

/J. Patrick Finn III, Reg. No. 44,109/
J. Patrick Finn III, Ph.D.
Reg. No. 44,109

Fish & Richardson P.C.
3200 RBC Plaza
60 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 335-5070
Facsimile: (877) 769-7945

60617266.doc